



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

A95-04

January 9, 1997

**MEMORANDUM**

**TO:** LAWRENCE M. NOBLE  
GENERAL COUNSEL

**THROUGH:** JOHN C. SURINA  
STAFF DIRECTOR

**FROM:** ROBERT J. COSTA *RJC*  
ASSISTANT STAFF DIRECTOR  
AUDIT DIVISION

**SUBJECT:** DAN HAMBURG FOR CONGRESS - REFERRAL MATTERS

On November 25, 1996, the Commission approved the final audit report (FAR) on Dan Hamburg for Congress (the Committee). The report was released to the public on December 9, 1996. The following findings are being referred to your office in accordance with the materiality thresholds approved by the Commission: Apparent Excessive Contributions; Disclosure of Contribution Information; Disclosure of Disbursement Information, and, Documentation for Disbursements.

With respect to the Disclosure of Contribution Information finding, the Committee materially corrected the portion of this finding related to contributions received from individuals in 1993 and it is therefore not subject to referral to your office. The portion related to 1994 contributions was *not* materially corrected and is therefore referable. The Committee also materially corrected the portion of this finding related to the disclosure of occupation and name of employer information and it is therefore not subject to referral to your office. In addition, the portion of this finding related to contributions from other political committees was *not* materially corrected and is therefore referable.

Memorandum to Lawrence M. Noble  
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All workpapers and related documentation are available for review in the Audit Division. Should you have any questions, please contact Marty Favin at 219-3720.

**Attachments:**

- FAR Finding II.B. (Apparent Excessive Contributions), FAR pages 6-9.
- FAR Finding II.D. (Disclosure of Contribution Information), FAR pages 10-14.
- FAR Finding II.E. (Disclosure of Disbursement Information), FAR page 15.
- FAR Finding II.G. (Documentation for Disbursements), FAR page 18.

B. Apparent Excessive Contributions

Sections 441a(a)(1)(A) and (a)(2)(A) of Title 2 of the United States Code state, that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000 and that no multicandidate political committee shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$5,000.

Section 100.7(a)(1)(iii) of Title 11 of the Code of Federal Regulations states, in part, that the term "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. The term "anything of value" includes all in-kind contributions.

Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states, in part, that any contributions which on their face exceed the contribution limitation set forth in 11 CFR 110.1 or 110.2 and contributions which do not appear to be excessive on their face, but which exceed the contribution limits set forth in 11 CFR 110.1 or 110.2 when aggregated with other contributions from the same contributor, and contributions which cannot be accepted under the net debts outstanding provisions of 11 CFR 110.1(b)(3) and 110.2(b)(3) may be either deposited into a campaign depository under 11 CFR 103.3(a) or returned to the contributor. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 CFR 110.1(b), 110.1(k), or 110.2(b) as appropriate. If a redesignation or reattribution is not obtained, the treasurer shall, within sixty days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

Section 103.3(b)(4) of Title 11 of the Code of Federal Regulations states, in part, that any contribution which appears to be illegal and which is deposited into a campaign depository

shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make all such refunds.

Section 110.1(k) of Title 11 of the Code of Federal Regulations states, in part, that any contribution made by more than one person, shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. A contribution made by more than one person that does not indicate the amount to be attributed to each contributor shall be attributed equally to each contributor. If a contribution to a candidate on its face or when aggregated with other contributions from the same contributor exceeds the limitations on contributions, the treasurer may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. A contribution shall be considered to be reattributed to another contributor if the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution; and within sixty days from the date of the treasurer's receipt of the contribution, the contributors provide the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

The Audit staff's review of contributions identified apparent excessive contributions from individuals totaling \$5,985 and apparent excessive contributions from other political committees (PAC's) totaling \$3,700. We did not find any evidence that the Committee attempted to contact contributors for the purpose of obtaining reattributions or redesignations of the contributions pursuant to 11 CFR 110.1(k)(3) or 110.1(b)(5). It should be noted that the regulatory period in which the Committee may seek and obtain proper reattributions or redesignations has expired. Further, the Committee did not maintain a separate account to deposit the questionable contributions nor did it maintain sufficient funds to make refunds of such contributions.

According to a Committee representative, contributions were aggregated by reviewing previous disclosure report entries and by using a computerized database.<sup>4/</sup> He added that the Committee noted any excessive contributions, contacted the contributor to obtain a redesignation or reattribution or, if

<sup>4/</sup> As discussed in Section I.D. of this report, the Committee's database was incomplete and, as a result, the Audit staff was unable to use it for testing purposes.

necessary, made a refund of the excessive portion of the contribution.<sup>5/</sup> It should be noted that none of the reported refunds were for the apparent excessive contributions identified by the Audit staff.

The Audit staff identified several factors that resulted in the Committee receiving excessive contributions. In several instances, individuals made contributions from both their personal accounts and business accounts; the contributions were not aggregated correctly. For example, the contributions from the individual's business were either recorded in the Committee's database under the business name or were omitted from the database. The Audit staff viewed such contributions as having been made by the signatory on the check, when available, or by the apparent owner of the business as recorded in the Committee's receipt documentation.

In other instances contributions were attributed to individuals and/or spouses without the required signatures. The Audit staff considered the contributions to be made by the individual who signed the contributor check unless documentation to the contrary was made available for review.

Further, it appears that the Committee aggregated for limitation purposes certain contributions from other political committees (PAC's) on a calendar year basis, as opposed to, on a per election basis. According to FEC Disclosure Reports filed by the PAC's, the contributions noted as excessive by the Audit staff were designated by the PAC's as contributions to the General election; however, the Committee attributed the contributions to the Primary election. It should be noted that in instances where no documentation containing the contributor's election designation was made available for review or when there was a conflict between the contributor's and the Committee's reports, the Audit staff compared the date of the contribution to the date of the Primary Election to determine whether a contribution was for the Primary or General Election. (See 11 CFR §110.1).

On May 10, 1996, the Committee was presented with a schedule of the apparent excessive contributions. The Committee made no related comments at that time.

In the interim audit report, the Audit staff recommended that the Committee provide evidence that the contributions in question were not in excess of the limitations. If unable to provide such evidence, it was further recommended that the contributions be refunded to the contributors and evidence of such refunds (copies of the front and back of the

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<sup>5/</sup> During the period covered by the audit, the Committee reported refunds of prohibited, excessive and other questionable contributions totaling \$2,685.

In the Committee's response to the interim audit report, the Committee filed amended Schedules D which disclosed all apparent excessive contributions from individuals and PAC's noted above as debts owed by the Committee. The Committee Treasurer stated that there were no funds available to pay these debts.

D. Disclosure of Contribution Information

Section 434(b)(3) of Title 2 of the United States Code states, in part, that each report under this section shall disclose the identification of each person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of \$200 within the calendar year, or in any lesser amount if the reporting committee should so elect, together with the date and amount of any such contribution.

Further, each report shall disclose the identification of each political committee which makes a contribution to the reporting committee during the reporting period, together with the date and amount of any such contribution.

Section 431(13) of Title 2 of the United States Code states, in part, that the term "identification" means in the case of any individual, the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer; and in the case of any other person, the full name and address of such person.

Section 104.7(a) and (b) of Title 11 of the Code of Federal Regulations states, in part, that if best efforts have been used to obtain, maintain and submit the information required by the Act for the political committee, any report of such committee shall be considered in compliance with the Act. With regard to reporting the identification of each person whose contribution(s) to the political committee and its affiliated committees aggregate in excess of \$200 in a calendar year, the treasurer and the committee will only be deemed to have exercised best efforts if all of the following are present: all written solicitations for contributions include a clear request for the contributor's full name, mailing address, occupation and name of employer; the treasurer makes at least one effort, in either a written request or a documented oral request, within thirty days of the receipt of the contribution, to obtain the information; and, the treasurer reports all contributor information not provided by the contributor, but in the committee's possession, including information in contributor records, fundraising records and previously filed reports, in the same two year election cycle. (The effective date of this regulation was March 3, 1994.<sup>6/</sup>

As noted in Section I.D. of this report, the Committee's contribution records were not maintained in a manner which would have allowed the Audit staff to perform the substantive testing normally undertaken when reviewing contributions. However, the Audit staff was able to use the available copies of contributor checks and the Committee's disclosure reports to reconcile the Committee's database to the bank activity. It should be noted that the database contained duplicate entries, inaccurate contribution amounts, and other errors involving the data recorded. In addition, several contributions were omitted from the database.

The Audit staff's review of contributions received from individuals revealed a material number of errors regarding the disclosure of contributor names, contribution dates, aggregate year-to-date totals, contributor addresses and earmarked contributions.

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<sup>6/</sup> This regulation also includes the provision that to demonstrate best efforts, the written solicitations must contain a statement that the requested contributor information is required by Federal law. However, on February 20, 1996, the Court of Appeals for the D.C. Circuit invalidated the mandatory statement provision. [Republican National Committee v. FEC, 76 F.3d 400 (D.C. Cir. 1996)] The court provided that the following language appears to satisfy the best efforts requirement: "Federal law requires us to use our best efforts to collect the information." [RNC, 76 F.3d at 406]



With respect to disclosure of occupation and name of employer information, the Audit staff's testing also revealed a material number of errors. In many instances the words "Best Efforts" were included in the Name of Employer field on Schedules A (Contributions from Individuals). It should be noted that the Committee did provide a few solicitation devices to the Audit staff, some of which contained a request for the contributor's occupation and name of employer, while others did not.

Nonetheless, the Committee was unable to demonstrate that it had exercised best efforts to obtain, maintain and submit the required occupation and name of employer information. The Committee did not provide any evidence of a second written or oral request to obtain the missing information as required by 11 CFR §104.7.7/

Further, the Audit staff's testing of contributions from other political committees (PAC's) revealed a material number of errors involving disclosure of contributor addresses and aggregate year-to-date totals.

Included in the Audit staff's review of contributions was a \$500 receipt from an unregistered political committee, Napa County Democratic Caucus (NCDC). The Committee reported this contribution as an offset to operating expenditures. Specifically, the Committee disclosed the contribution as a "Rental Deposit Refund" in its 1993 Mid-Year report. The Audit staff found a letter from the treasurer of the NCDC which stated:

"At its regular meeting on February 6, 1993, our membership voted to contribute \$500 to your committee. Since then [sic] I have been in contact with the California FPPC Consultants for guidance in the procedure we are obligated to follow when such contributions have been made. They suggested that we would be responsible for making reports to the FEC.

"I also called your 800 number and requested your ID# as well as any guidance you may be able to provide. We hoped to complete this business prior to our next meeting, and, since I have not heard from you to date I have decided to

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7/ The majority of the errors involved contributions dated after the effective date of the change to 11 CFR §104.7. The Committee did not satisfy the best efforts provision of either the current or former regulation with respect to the contributions in question.

identify this contribution as a 'refund of rent paid to our Headquarters during the campaign.'

"Perhaps, that may eliminate the necessity for making whatever FEC reports would be required. I repeat, we welcome any guidance from your committee in our obligations according to FEC requirements."

In our review of the available disbursement documentation, the Audit staff did not find any evidence of payments made from the Committee's accounts to the NCDC.

Further, the Committee reported receiving \$1,000 from Ukiah Valley Democratic Club (one \$500 check on October 12, 1994 and another \$500 check on October 20, 1994) as "Offsets to Operating Expenditures". These receipts were disclosed as a "Refund" and "Refund of Rent", respectively; however, the Committee's disbursement records indicate that a single payment of \$356 on December 12, 1994 was made to the Ukiah Valley Democratic Club for "Rent."

Based on the information made available during fieldwork, it appears that the \$500 received from the NCDC was a contribution and not a "Rental Deposit Refund" as disclosed by the Committee. Further, the correspondence from the NCDC treasurer, wherein he "decided to identify this contribution as a 'refund of rent paid to our Headquarters during the campaign'" [emphasis added], raises the question as to whether the Committee knowingly misreported the transaction at issue.

As for the \$1,000 received from Ukiah Valley Democratic Club, the disclosure of these transactions as offsets, rather than contributions, is questionable.

A schedule of the disclosure errors was presented to the Committee on May 10, 1996. The Committee made no related comments at that time.

In the interim audit report, the Audit staff recommended that the Committee provide the following documentation or corrective amendments:

- ° Evidence which demonstrated that best efforts had been used to obtain, maintain, and submit the required disclosure information and any evidence of follow up written or oral requests to contributors for this information; or,
- ° Absent such demonstration, the Committee was requested to make an effort to contact those individuals whose contributions aggregated in excess of \$200 in a

calendar year and whose required information was missing, incomplete, or designated "Best Efforts" in the reports. These contributors were to be requested to submit this information and to be informed that Federal law required the Committee to disclose such information;

- Documentation of any such contacts;
- Copies of any contributor responses; and
- Amended Schedules A (Itemized Receipts) to disclose any information obtained from these contacts and/or to correct information originally reported incorrectly.

The Audit staff further recommended that the Committee provide an explanation of the circumstances surrounding the receipt of apparent contributions from various sources that it disclosed as Offsets to Operating Expenditures.

In the Committee's response to the interim audit report, the Committee submitted the following: a photocopy of a form letter, dated July 25, 1996, from the Treasurer to individuals requesting missing contributor information; a listing of contributors to whom the letter was sent; and, written responses from some of the recipients of the form letter. The Committee also filed amended Schedules A which corrected the disclosure of several of the contributions from individuals and PAC's. Although the Committee provided information on these amendments, a material number of errors still remain regarding the names and addresses of contributors, as well as the dates and aggregate year-to-date totals for contributions.

Regarding the three items, totaling \$1,500, disclosed by the Committee as offsets to operating expenditures, but noted by the Audit staff as contributions, the Treasurer stated that in an effort to clarify these transactions, he searched the campaign files and talked with ex-campaign staff but was unable to determine why these items were disclosed in this manner. He added that as a result, he re-characterized them as contributions on the amended disclosure reports. The Audit staff notes that the disclosure of the \$500 item from Napa County Democratic Caucus did not change - it was still disclosed as an offset to operating expenditures. The two items from Ukiah Valley Democratic Club, totaling \$1,000, originally disclosed as offsets were disclosed as contributions on the amended Schedules A.

### E. Disclosure of Disbursement Information

Section 434(b)(5)(A) of Title 2 of the United States Code states, in part, that each report under this section shall disclose the name and address of each person to whom an expenditure in aggregate amount or value in excess of \$200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure.

Section 104.3(b)(3)(i)(A) and (B) of Title 11 of the Code of Federal Regulations states, in part, that purpose means a brief statement or description of why the disbursement was made. Examples of statements or descriptions which meet the requirements include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, and catering costs. However, statements or descriptions such as advance, election day expenses, other expenses, expenses, expense reimbursement, miscellaneous, outside services, get-out-the-vote and voter registration would not meet the requirements of 11 CFR 104.3(b)(3) for reporting the purpose of an expenditure.

As noted in the Scope section of this report, the Audit staff's testing of disbursements was limited. The Committee did not maintain documentation from its vendors (i.e., invoices and/or receipted bills) that detailed the addresses and/or the purposes disclosed on its Schedules B for a material number of its disbursements. Thus, the Audit staff was unable to determine whether the addresses and purposes disclosed on the reports were accurate.

The Audit staff's testing of disbursements itemized on Schedules B of the Committee's reports revealed a material error rate for the required disclosure information. The errors involved inadequate purposes, incomplete or omitted addresses and combining two separate disbursements into a single itemized entry.

The Audit staff notified the Committee of the reporting problems on May 10, 1996. The Committee made no related comments at that time.

In the interim audit report, the Audit staff recommended that the Committee file amended Schedules B (Itemized Disbursements) providing complete and accurate information for the itemized disbursements.

In the Committee's response to the interim audit report, the Committee filed amended Schedules B which corrected several of the errors noted above. However, the error rate relative to the Committee's overall disclosure of disbursement information is still material.

G. Documentation for Disbursements

Section 432(c)(5) of Title 2 of the United States Code requires the treasurer of a political committee to keep an account of the name and address of every person to whom any disbursement is made, the date, amount, and purpose of the disbursement, and the name of the candidate and the office sought by the candidate, if any, for whom the disbursement was made, including a receipt, invoice, or canceled check for each disbursement in excess of \$200.

Section 102.9(b)(1) and (2) of Title 11 of the Code of Federal Regulations states, in part, that an account shall be kept of all disbursements made by or on behalf of the political committee. Such account shall consist of a record of the name and address of every person to whom any disbursement is made and the date, amount and purpose of the disbursement. In addition, a receipt or invoice from the payee or a cancelled check to the payee shall be obtained and kept for each disbursement in excess of \$200 by or on behalf of, the committee.

Section 104.3(b)(4)(i)(A) of Title 11 of the Code of Federal Regulations defines "purpose" as a brief statement or description of why the disbursement was made.

The Audit staff reviewed the Committee's disbursements on a sample basis and determined that the Committee did not satisfy the minimum recordkeeping requirements for a material number of its disbursements. The Committee did maintain canceled checks for most of its disbursements, however, the checks did not detail the purpose of the disbursement and/or contain the payee's address.<sup>8/</sup>

The Committee was notified on May 10, 1996 that it did not satisfy the minimum recordkeeping requirements. The Committee made no related comments at that time.

In the interim audit report, the Audit staff recommended that the Committee obtain and submit documentation which provided the addresses and purposes for its disbursements or provide evidence of its efforts to obtain such documentation. The Committee did not respond to this finding.

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<sup>8/</sup> As noted in the Scope section of the report, the Commission had to issue subpoenas to the Committee's treasurer and financial institutions for production of certain documents including several canceled checks.